

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Sandwich Isles Communications, Inc.)	CC Docket No. 96-45
)	
Petition for Waiver of the Definition of)	
“Study Area” Contained in Part 36,)	
Appendix-Glossary and Sections 36.611,)	
And 69.2(hh) of the Commission’s Rules)	
)	

**COMMENTS OF PACIFIC LIGHTNET, INC.
IN SUPPORT OF SANDWICH ISLES COMMUNICATIONS, INC.’S
PETITION FOR WAIVER**

A. Introduction

Pacific LightNet, Inc. (Pacific LightNet), pursuant to Sections 1.415 and 1.419 of the Commission’s rules, 47 C.F.R. §§ 1.415, 1419, and the Commission’s January 18, 2005 Public Notice in CC Docket No. 96-45, DA 05-105, submits these comments in support of Sandwich Isles Communications, Inc.’s (Sandwich Isles) petition requesting waiver, *nunc pro tunc*, of the definition of “Study Area,” as codified in the Appendix-Glossary of Part 36, and Sections 36.611 and 69.2(hh) of the Commission’s rules. 47 C.F.R. §§ 36.611, 69.2.

Sandwich Isles’ petition is in response to the Commission’s order requiring Sandwich Isles to seek and obtain such a study area waiver,¹ so that Sandwich Isles

¹ See, *GTE Hawaiian Telephone Company, Inc.*, AAD 97-82, Memorandum Opinion and Order, FCC 04-256, 19 FCC Rcd 22268 (2004) (*Verizon Hawaii*).

can continue to serve the Hawaiian Home Lands as an incumbent local exchange carrier and receive universal support based on its own costs.²

A Hawaii-based competitive local exchange carrier serving customers on Oahu, Maui, Kauai, the Big Island, Molokai and Lanai through its own submarine cable and land-based fiber network, Pacific LightNet offers a full range of integrated telecommunications products and services, including local dial tone, high-speed Internet access, dedicated and switched long distance, collocation, special access and enhanced data services.³ In a nutshell, Pacific LightNet believes that the Commission's Common Carrier Bureau got it right back in 1998 when it granted Sandwich Isles various rule waivers permitting it to be treated as an incumbent local exchange carrier and designated the Hawaiian Home Lands as Sandwich Isles' study area.⁴ Pacific LightNet has adopted this position because it supports the Hawaiian Home Lands' right to affordable, quality telecommunications services, and because it believes that the largely autonomous Hawaiian Homes Commission, acting through the State of Hawaii Department of Hawaiian Home Lands, has granted Sandwich Isles what amounts to an exclusive right to provide such services to the native Hawaiians who occupy the Hawaiian Home Lands.

² See, Sandwich Isles Communications, Inc., Petition for Waiver of the Definition of "Study Area" Contained in Part 36, Appendix-Glossary and Sections 36.611, 69.2(hh) of the Commission's Rules, CC Docket No. 96-45, filed December 27, 2004, at iii (petition); and *Verizon Hawaii*, 19 FCC Rcd at 22273, para. 10, which authorizes Sandwich Isles' continued treatment as an incumbent LEC for purposes of receiving universal service support until the Commission rules on the petition.

³ On October 21, 2001, Pacific LightNet acquired the assets of the former GST Hawaii, which, in 1996, became the first company to receive state-wide approval to compete for local service with the then GTE Hawaiian Tel—which now does business as Verizon Hawaii.

⁴ See, *Sandwich Isles Communications, Inc. Petition for Waiver of Section 36.611 of the Commission's Rules and Request for Clarification*, Order, AAD 97-82, 13 FCC Rcd 2407 (Acct. Aud. Div. 1998). The Commission, needless to say, having taken up Verizon Hawaii's belated appeal, has inexplicably taken six years to reverse the Common Carrier Bureau's 1998 decision.

B. The Unique Status of the Hawaiian Home Lands and the Hawaiian Homes Commission's Exclusive Authority to Manage Them

As Sandwich Isles has well-recounted in its petition, the Hawaiian Home Lands qualify as unique trust lands that were established for the sole benefit of native Hawaiians in 1921 by an Act of Congress.⁵ Further, as a condition of statehood, the Hawaiian Homes Commission was incorporated into the Hawaii State Constitution, resulting in (a) the transfer of the Hawaiian Home Lands to the State of Hawaii and (b) the continuing exclusive authority of the Hawaiian Homes Commission in managing these trust lands on behalf of eligible native Hawaiians.⁶

Significantly, the Hawaiian Home Lands consist of roughly 70 non-contiguous parcels set aside on the six major Hawaiian Islands, which, prior to the efforts of Sandwich Isles, were largely lacking in even basic telephone service. But, even more importantly, the Hawaiian Homes Commission has, in the exercise of its exclusive trust authority, issued but a single telecommunications license authorizing any carrier to provide services to the Hawaiian Home Lands and that carrier is Sandwich Isles, which obtained such license in 1995.⁷ Thus, at present, no other local exchange carrier has the requisite authority to provide services to the Hawaiian Home Lands.

⁵ Hawaiian Homes Commission Act (HHCA), 1920, 48 Stat. 108.

⁶ See, Hawaii Statehood Act, 73 Stat. 4; State of Hawaii Constitution, Art. XII, Sec. 1; and *Ahuna v. Department of Hawaiian Home Lands*, 64 Haw. 327, 640 P.2d 1161, 1168-1169 (1982) (“The Department of Hawaiian Home Lands, headed by the Hawaiian Homes Commission, received exclusive control of the Hawaiian home lands by section 204 of the HHCA”).

⁷ See, Sandwich Isles’ Petition at pp. 2-5.

C. The Hawaii Public Utilities Commission has, Time and Again, Certified to the Commission that Sandwich Isles' Should Continue to Receive Federal High-Cost Support, and Does Not Oppose Sandwich Isles' Pending Request for Waiver Before this Commission

For its part, moreover, the Hawaii Public Utilities Commission (HPUC) has reinforced Sandwich Isles' apparent status as the incumbent local exchange carrier for the Hawaiian Home Lands, as it has (a) granted Sandwich Isles, on November 14, 1997, a Certificate of Authority to provide IntraLATA and intrastate telecommunications services on lands administered by the Department of Hawaiian Home Lands; (b) designated Sandwich Isles, on December 9, 1998, an eligible telecommunications carrier (ETC) under federal law for the service area consisting of the lands administered by the Department of Hawaiian Home Lands; (c) annually certified to the Commission, pursuant to 47 U.S.C. 254(e) and 47 C.F.R. 54.314, that Sandwich Isles should continue to receive federal high-cost support from the universal service fund; and (d) on January 10, 2005, filed a letter in the above-captioned docket stating that "the HPUC does not oppose a grant of the waiver of the definition of "Study Area requested by [Sandwich Isles] in its Petition for Waiver."⁸

Given the HPUC's mandate as guardian of the public interest where utility matters are concerned in the State of Hawaii, its determination not to oppose Sandwich Isles' waiver request should be accorded substantial weight in this proceeding.

CONCLUSION

⁸ See, the HPUC's January 10, 2005 letter filed in this proceeding.

Based on the foregoing, Pacific LightNet supports the Commission's granting Sandwich Isles the requested waivers for these reasons:

- prior to 1995 and the founding of Sandwich Isles, the Hawaiian Home Lands apparently failed to achieve any appreciable benefits from the Commission's long-standing universal service policies;
- the Hawaiian Home Commission, acting in its fiduciary capacity as sole trustee of the Hawaiian Home Lands under both its enabling federal statutes and the Hawaii Constitution, enjoys the exclusive authority to designate who shall provide service to the Hawaiian Home Lands;
- the Hawaiian Home Commission has designated a single licensee to provide telecommunications services to the Hawaiian Home Lands, which has resulted in substantial benefits to the rural native Hawaiians residing in the Hawaiian Home Lands, as well as to those prospective native Hawaiians slated for eventual occupancy;
- the HPUC's successive certifications concerning Sandwich Isles' status as an authorized ETC entitled to federal high-cost universal service support—to say nothing of the fact that the HPUC has determined not to oppose Sandwich Isles' waiver petition—merits substantial weight in this proceeding; and
- Sandwich Isles has relied, to its detriment, on its apparent status—both *de facto* and *de jure*—as the incumbent local exchange carrier for the Hawaiian Home Lands, and any belated change in that status will ultimately adversely effect the rural native Hawaiians who occupy the Hawaiian Home Lands.

Accordingly, as a matter of law, equity,⁹ public policy, and the public interest, the Commission should grant Sandwich Isles' requested waivers.

Respectfully Submitted,

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Certificate of Service

I hereby certify that a true and correct copy of the foregoing Pacific LightNet, Inc.'s Petition For Reconsideration was served this 6th day of October, 2004, upon the following:

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⁹ If nothing else, the equitable principles of estoppel and detrimental reliance support the Commission's granting of Sandwich Isles' request waivers.

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